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Notice of Allowability

Application No.

10/790,950

Applicant(s)

DEKKER, ANDREAS LUBBERTUS
ALOYSIUS JOHA

Examiner

Navin Natnithithadha

Art Unit

3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 22 July 2005.
2. ☒ The allowed claim(s) is/are 1-13.
3. ☒ The drawings filed on 22 July 2005 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|--|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____. |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____. |

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Kent A. Fischmann on 03 August 2005.

The application has been amended as follows:

IN THE CLAIMS:

In claim 1, line 11, amend "said second Mayer wave components" to:

-- second Mayer wave component --.

In claim 2, line 1, amend "Claim 3" to:

-- Claim 1 --.

In claim 2, line 2, amend "Mayer Wave" to:

-- Mayer wave. --.

In claim 4, line 1, amend "Claim 7" to:

-- Claim 1 --.

Cancel claims 14-22.

Election/Restrictions

2. Newly submitted claims 14-22 are directed to inventions that are independent or distinct from the invention originally claimed for the following reasons:

Claims 14-18 are directed to a method for use in monitoring a patient comprising the step of processing spectral information in order to obtain blood volume variation of a patient, instead of processing spectral information in order to distinguish an effect associated with one of a first component associated with the operation of the patient's respiratory system and a second Mayer wave component. Therefore, these claims are directed to a patentably distinct species of the claimed invention.

Claims 19-22 are directed to an apparatus for use in monitoring a patient. These claims relate to claims 1-13 as process and apparatus for its practice, claims 1-3 directed to the process and claims 19-22 directed to an apparatus. Therefore, claims 19-22 are distinct because the processor in the apparatus does not require processing spectral information to distinguish an effect associated with one of the first a first component associated with the operation of the patient's respiratory system and a second Mayer wave component, and using the distinguished effect to monitor a physiological parameter.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 14-22 are withdrawn from consideration

as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

3. The following is an examiner's statement of reasons for allowance:

In regards to independent claim 1, the prior art of record does not teach a method for use in non-invasively monitoring a physiological parameter of a patient, comprising the steps of: transforming a time-based pleth signal into a frequency domain to obtain spectral information including information associated a first component associated with the operation of the patient's respiratory system and a second Mayer wave component; and processing the spectral information to distinguish an effect associated with one of the first component and the second Mayer wave component from an effect associated with the other of the components.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Navin Natnithithadha whose telephone number is (571) 272-4732. The examiner can normally be reached on Monday-Friday, 8:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571) 272-4726. The fax phone

Art Unit: 3736

number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Navin Natnithithadha
Patent Examiner
GAU 3736
05 August 2005



ROBERT L. NASSER
PRIMARY EXAMINER